IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

CRIMINAL REVISION APPLICATION No 214 of 2000

For Approval and Signature:

Hon'ble MR.JUSTICE D.C.SRIVASTAVA

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : NO

2. To be referred to the Reporter or not? : YES

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the Civil Judge? : NO

MANIBEN DAHYABHAI

Versus

STATE OF GUJARAT

Appearance:

MR MJ BUDDHBHATTI for Petitioners

MR MA BUKHARI, APP, for Respondent No. 1

CORAM : MR.JUSTICE D.C.SRIVASTAVA

Date of decision: 29/08/2000

ORAL JUDGEMENT

This revision is directed against an order dated 5th May 2000 of Additional Sessions Judge, Veraval, rejecting the application of the revisionists for discharging them from the offences under which they are

proposed to be tried. Shri M.J.Budhbhatti for the revisionist and Shri M.A.Bukhari for the respondent have been heard. The impugned order has been examined. The learned counsel for the revisionist has in support of his contention placed reliance upon the judgement of the Apex Court in the case of LOKENDRA SINGH V. STATE OF M.P. reported in 1999 SCC (Cri) 371 and has contended that on the basis of this pronouncement the impugned order cannot be sustained. For proper appreciation of this contention, we have to see the brief facts under which the application for discharge was rejected by the learned Additional Sessions Judge.

2 Initially the Police submitted a charge sheet after completing the investigation against the accused including the revisionist under Sections 302, 201 read with Section 34 of the IPC. While considering the application for discharge the learned Additional Sessions Judge has, as required by Section 227 of Cr.P.C., considered the entire material available before him, namely, Post Mortem Report, FIR and the statements of the witnesses recorded by the investigating officer during the investigation u/s 161 of Cr.P.C. He has also referred to a judgement of the Apex Court on the subject.

3 The Additional Sessions Jude was justified in taking the view that while framing the charge he has to consider the entire material placed before him by the prosecution and from that material he has to come to the conclusion whether there is prima facie evidence to proceed against the accused or not. At that stage, of course, he can sift and weigh the evidence but not with the purpose that such evidence will be sufficient for conviction of the accused. On the other hand, sifting of the evidence is done only with a view to come to a prima facie conclusion that there is material against the accused for proceeding against him under various Sections for which he has been charge-sheeted. He has also taken correct view that merely because charge sheet is submitted under a particular section of IPC or particular sections of the IPC, he is not mechanically bound to frame charges under those sections as desired by the investigating agency. On the other hand from the material on the record he has to come to his own conclusion that prima facie all the offences appear to have been committed by the accused persons or not. At this stage, the Sessions Judge or the Additional Sessions Judge is required to consider whether the accused might have committed the offence and not that the accused must have committed the offence for which they are to be charged. It is at the later stage, after collection of

evidence, that the Sessions Judge has to come to a conclusion whether the offences alleged to have been committed by the accused have been proved by the prosecution beyond all shadow of doubt or not.

4 The Apex Court in the case of Union of India v. Prafulla Kumar Samal reported in AIR 1979 SC 366 has observed that the Judge while considering the question of framing the charge u/s 227 of the Cr.P.C. has the undoubted power to sift and weigh the evidence for the limited purpose of finding whether or not a prima facie case against the accused has been made out. Where the materials placed before the Court disclose grave suspicion against the accused which has not been properly explained, the Court will be fully justified in framing the charge and proceeding with the trial. It further laid down that by and large however if two views are equally possible and the judge is satisfied that the evidence produced before him while giving rise to some suspicion but not grave suspicion against the accused, he will be fully within his right to discharge the accused.

5 Thus, in view of this verdict of the Apex Court, the Additional Sessions Judge could have been justified in discharging the revisionist only when he was satisfied that the evidence produced before him gives rise to some suspicion but not grave suspicion against the accused. The Additional Sessions Judge has discussed the relevant evidence produced before him and from that evidence he came to the conclusion that prima facie offences punishable under Section 498(A) and 304(B) of the IPC read with Section 34 of the IPC could be proceeded with and the accused should be tried under these Sections. According to the Additional Sessins Judge, it was not a case where there was absolutely no evidence on which the accused could be proceeded for trial. It was also not a case where the material placed before the Additional Sessions Judge disclosed grave suspicion against the accused which has not been properly explained.

6 In the light of the aforesaid principles laid down by the Apex Court, the Additional Sessions Judge has examined the material placed before him. He has observed that the charge sheet was submitted under Sections 302, 201 read with Section 34 of the IPC. But according to him in view of the post mortem report, the burn injuries on the body of the deceased were found post mortem. Consequently, prima facie it was not shown that the deceased committed suicide by burning herself. If burn injuries were the cause of death, then, such injuries in the post mortem report should have been described as ante

mortem and not post mortem injuries. The post mortem report further shows that ligature marks were also found around and below the thyroid cartillage encircling the neck horizontally and completely. In the post mortem report it was further found that there was fracture of thyroid cartillage bone. Tongue was found to be protruded. The cause of death, mentioned in the post mortem report was asphyxia due to strangulation and not on account of burn injuries. The Additional Sessions Judge has also considered the inquest report and the statements of the witnesses recorded by the Investigating Officer u/s 161 of the Cr.P.C. and from such evidence he found that prima facie the death of Manjulaben was caused on account of strangulation and not due to burn injuries. The Additional Sessions Judge has also taken into consideration the surrounding circumstances of the case, namely, the accused and the deceased were living in the same house and the incident took place in their presence hence accused were the best persons to explain under what circumstances the deceased died. No explanation has come from their side on this point. The learned Additional Sessions Judge has found that false explanation was given by the accused in the FIR that it was a case of suicide committed by the deceased. It was also considered by the Additional Sessions Judge that the father of the deceased made a statement before the police that the incident took place within seven years of marriage of the deceased with her husband and that the deceased was complaining to her father about demand for additional dowry and complaint from the accused was that she has not brought sufficient dowry and on account of meagre dowry the accused used to beat and ill-treat her physically as well as mentally. Mental cruelty was also stated by the father of the deceased before the police. On such material, to my mind, the learned Additional Sessions Judge was justified in rejecting the application of the accused for discharge and he has rightly observed that from the material placed before him the accused could be charged under Sections 498(A), 304(B) read with Section 34 of the IPC.

7 The case of LOKENDRA SINGH V. STATE OF M.P. reported in 1999 SCC (Cri) 371 is distinguishable on facts. In this case, the appellant was charged under Section 302 and in the alternative under Section 306 of the IPC. The trial Judge convicted the appellant under Section 302 but no finding in respect of the charge under Section 306 was recorded resulting in his acquittal under Section 306 of Cr.P.C. The State of Madhya Pradesh did not file any appeal against acquittal u/s 306 of Cr.P.C. On appeal filed by the appellant, the High Court acquitted the appellant of the charge u/s 302 but

convicted him u/s 306 of the IPC. On these facts it was held by the Apex Court that the offence u/s 306 being not a minor offence in relation to Section 302 within the meaning of Section 222 of Cr.P.C. the High Court was not justifed in convicting the appellant u/s 302 of the IPC after having acquitted him of the charge under Section 302 of the IPC. The Apex Court confirmed the finding of the High Court acquitting the appellants u/s 302 of the IPC. It further found that Section 304(B) of the IPC squarely applied to the facts of the case but since the incident took place prior to the introduction of this Section, the accused could not be convicted under Section 304(B) of the IPC. I am afraid on the aforesaid facts, the law laid down by the Apex Court can be applied to the facts of the present case before me which is essentially at the stage of framing of the charge. In my view, this decision is distinguishable on facts.

9 In view of the reasons stated above, I do not find any illegality in the order passed by the Additional Sessions Judge. The revision is therefore dismissed.

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(mohd)